

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LEE CHILDRESS, JR.,

Petitioner,

No. CIV S-02-0870 DFL GGH P

vs.

MIKE KNOWLES, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding with appointed counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By order filed on March 28, 2006, the district judge rejected the September 20, 2005 findings and recommendations and denied petitioner's April 18, 2005 motion for judgment on the pleadings as to claim two. Judge Levi referred the case to the undersigned for further proceedings.

Prior to the adjudication of claim two, petitioner had been proceeding on three claims. Petitioner has accurately noted that the Ninth Circuit has found that all claims of a habeas petition need not be addressed or adjudicated if the claim or issue decided is dispositive of the action. See Blazak v. Ricketts, 971 F.2d 1408, 1411-1413 (9th Cir. 1992). That is, if the writ had been granted on the ground recommended, adjudicating the additional claims could not have provided further relief; thus, the remaining claims would have been rendered moot.

1           However, in light of the denial of petitioner's motion for judgment on the  
2 pleadings as to ground two, this matter must now proceed as to the two remaining claims, claim  
3 one (trial court's failure to instruct the jury on the defense theory violated petitioner's right to due  
4 process and right to present a defense) and claim three (trial court erred by instructing the jury on  
5 the wrong burden of proof regarding the defense of necessity). An answer to the amended  
6 petition and a reply (traverse) have been previously filed, wherein all grounds for relief were  
7 briefed. The matter is now submitted solely on the two remaining grounds for relief, claims one  
8 and three.

9           IT IS SO ORDERED.

10          DATED: 3/31/06

/s/ Gregory G. Hollows

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12          chil0870.prc

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE